

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
THE FUND FOR ANIMALS, <i>et al</i>	)	
	)	
Plaintiffs,	)	Civil Action No. 02-2367
	)	(EGS)
v.	)	
	)	
GALE NORTON, <i>et al</i> ,	)	
	)	
Defendants,	)	
_____	)	
_____	)	
GREATER YELLOWSTONE	)	
COALITION, <i>et al</i>	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
GALE NORTON, <i>et al</i> ,	)	
Defendants,	)	
_____	)	

ORDER

Pending before the Court are Defendant Intervenor International Snowmobile Manufacturers Association, Inc. ("ISMA") and Blueribbon Coalition's Emergency Motion for a Stay of Judgment and the Defendant Intervenor State of Wyoming's Motion for an Emergency Stay of Judgment. Upon careful consideration of the Emergency Motions, the responses and replies thereto, the entire record herein, as well as the governing

statutory and case law, it is by the Court hereby **ORDERED** that the Emergency Motions for a Stay of Judgment are **DENIED**.

The Court is not persuaded that the factual and legal predicates for the extreme remedy of issuing a stay are met. See *Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977). The Court finds that, for the reasons stated in the December 16, 2003, Memorandum Opinion, defendants are unable to demonstrate a likelihood of success on the merits, as the Court found clear violations of the National Environmental Policy Act ("NEPA") and the Administrative Procedure Act ("APA"). The Intervenor's have failed to present any new evidence to persuade the Court that its holding was in error. For this reason alone, the motion for a stay must be denied. *Blankenship v. Boyle*, 447 F.2d 1280 (D.C. Cir. 1971) (denying a motion for stay despite a showing of irreparable harm because there was no showing of a likelihood of success on the merits).

Moreover, the Court notes that the Intervenor's cannot establish a showing of irreparable harm. See *Washington Metro. Area Transit Comm'n*, 559 F.2d 841. The Intervenor's' claim that the Court's decision "will lead to chaos in the Three Parks

because of its timing" is disingenuous at best. ISMA Intervenor's Mot. at 6. All defendants, including the Intervenor, originally argued extensively that the Court *should not* issue a decision *before* the Final Rule was published due to ripeness concerns; they now argue that a decision issued a *mere four days* after the publication of the Final Rule causes irreparable injury. Defendants cannot have it both ways. For reasons entirely beyond the Court's control, and entirely in the control of the Federal Defendants, who support the application for the stay, the Final Rule was not published until December 11, 2003, just six days before the Parks' winter season was to begin. For months prior to the challenged opinion, the Court repeatedly questioned the delay in implementing the Final Rule, and warned the parties that the delay raised serious concerns for the Court:

(Judge Sullivan): Why has it taken so long for the government to issue a Final Ruling? The ROD has been out there for quite some time . . . You recognize that legitimate arguments can be made by some that the government's intentionally delaying publication of a final rule to coincide with the opening of the winter season, do you not?

See, e.g., Transcript of Motions Hearing (Morning Session) (Nov. 20, 2003) ("Tr.") 5-7. Defendants assert that it is "suddenly completely unclear whose reservations will be honored . . . and how admittance to the Park will be handled." ISMA Intervenor's

Mot. at 7-8. However, Federal Defendants *repeatedly* advised the Court that they were ready and able to implement the 2001 Winter Plan that defendants acknowledged would go into effect if the 2003 Rule was not implemented. See, e.g., Hr'g Tr. at 7 (Federal Defendants' counsel stating that if the 2003 Final Rule did not go into effect, the parks would "operate under the 2001 Regulation . . . the Park Service is ready with a backup . . . they are prepared to operate under the fifty percent mandate." ). The Court took the Federal Defendants at their word, and the Intervenor cannot claim surprise as a result of the Court's Order.

Moreover, any economic or emotional harm to those who made plans to visit the Park falls squarely on the defendants' shoulders. The Parks-run by the National Park Service ("NPS")-and snowmobile vendors chose to begin taking reservations and accepting potential visitors' money in July of 2003, on the assumption that the 2003 ROD would go into effect, despite the fact that a Final Rule *did not exist*, and despite the fact that the ISMA and the NPS were involved in ongoing litigation challenging the 2003 ROD. Press Release, Yellowstone National Park, Yellowstone Announces Snowmobile Reservation System for

2003-2004 Winter Season (July 10, 2003) (available at <http://www.nps.gov/yell/press/0348.htm>) (announcing the start of the snowmobile reservation system for the 2003-04 season, indicating that advance reservations could be made as early as July 2003, and referring viewers to the Park's main web page for more information about "the implementation of the March 2003 Record of Decision."). If those making snowmobiling reservations and planning winter trips to the Parks "were not warned by [the NPS and the Intervenor] of the pending litigation," as well as the distinct possibility that the 2001 Final Rule requiring a snowmobile phase-out would remain in effect, "their interests were not well served" by the defendants. *Nat'l Parks & Conservation Ass'n v. Babbitt*, 241 F.3d 722, 738 (9th Cir. 2001); see also *Lee v. Christian Coalition of Am., Inc.*, 160 F.Supp.2d 14, 33 (D.C. Cir. 2001) ("The case law is well settled that a preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted.") (internal quotations and alteration omitted).

Finally, to now grant the Intervenor's motions for a stay would be tantamount to the Court blinking reality at the

promulgation of a final rule that is belied by the government's own evidence.

**Signed:   Emmet G. Sullivan**  
**United States District Judge**  
**December 23, 2003**